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June 20, 1994

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JUN 20 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

*NOT ADMITTED IN D.C.

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation on Implementation of
Section 309(j) of the Communications Act:
Competitive Bidding, PP Docket No. 93-253

Dear Mr. Caton,

On June 20, 1994, Henry Coe, President of PlusCom, Inc., and I had a meeting with William E. Kennard, FCC General Counsel to discuss PlusCom's views concerning the auction rules being promulgated for broadband PCS, particularly the preferences being considered for small businesses, businesses owned by women, business owned by minorities, and rural telephone companies (the "Designated Entity" applicants). These issues are now before the Commission in connection with the Notice of Proposed Rulemaking, 8 FCC Rcd 7635 (1993) ("NPRM") and the Second Report and Order in the above-referenced docket, FCC 94-61 (April 20, 1994) ("Second Report and Order"). Therefore, in accordance with Section 1.1206(a)(2) of the Commission's Rules, we hereby submit to you an original and one copy of the views expressed at this meeting, as set forth below.

- PlusCom, Inc. (Personal Link Universal Service Communications) is a new company formed with the intention of entering the broadband PCS licensing process. PlusCom is a privately-owned minority corporation operating under the SBA small business eligibility guidelines. Therefore, PlusCom qualifies for any preferences the Commission implements for Designated Entity applicants.

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- As the Commission noted in the Second Report and Order at ¶ 227, Congress mandated that the Commission ensure economic opportunity for Designated Entity applicants, 47 U.S.C. § 309(j)(4)(D). Entities such as Tier 1 Local Exchange Carriers, Interexchange Carriers, and large cable companies are expected to bid many millions of dollars on PCS licenses. Without some control mechanisms, these multi-billion dollar entities will be able to outbid any and all Designated Entity applicants in any auction.
- License acquisition costs are only a fraction of the network deployment costs. Therefore, a simple bidding preference is insufficient to give enough economic advantage to a small business to be able to compete with a large company. Even if Designated Entities receive a bidding credit of 25%, see Second Report and Order at ¶ 242, the large companies can easily outbid small businesses by more than the amount of the preference margin given to a Designated Entity. In effect, a bidding preference is no more than a token gesture that will result in very few, if any, licenses obtained by small businesses.
- PlusCom continues to support the proposal to auction blocks of broadband PCS spectrum only to Designated Entity applicants. NPRM, 8 FCC Rcd at 7635, 7655 ¶¶ 4, 121. The Commission has allocated two 30 MHz blocks of broadband PCS spectrum to be licensed on a Major Trading Area ("MTA") basis, one 30 MHz block to be licensed on a Basic Trading Area ("BTA") basis, and three 10 MHz blocks to be licensed on a BTA basis. See Memorandum Opinion and Order, GEN Docket No. 90-314, FCC 94-144, at ¶ 78 (June 13, 1994). As explained in PlusCom's previously filed Ex Parte Comments in this docket, the FCC can avoid Constitutional issues related to set-asides by focusing allocation programs on purely economic criteria. Therefore, PlusCom proposes the Commission designate the 30 MHz BTA frequency block as an "entrepreneurial band" and allow bidding from only "small businesses," defined for this purpose as businesses with annual revenues of less than \$100 million. See Ex Parte Comments of PlusCom, Inc., PP Docket No. 93-253 (June 1, 1994). A division by BTA will be much more manageable for small businesses from both an auction and a build-out and management perspective. PlusCom would find it much easier to bid on and develop an aggregate of BTAs rather than one or two MTAs.

- PlusCom further proposes that the Commission accept applications for and conduct the auction for the "entrepreneurial band" at least 60 days subsequent to the auction for the two 30 MHz MTA blocks. Conducting the "entrepreneurial band" auction second would allow those large companies who were unable to obtain the markets they desired in the first auction to take a minority position in a small business consortium. This would result in a win-win situation, where the small business consortium would have a source of financing, and the large company would have access to the spectrum it desires. However, these type of consortium arrangement are only feasible if formed after the "losers" of the MTA auction are identified.
- By setting aside an "entrepreneurial band" for small business bidders only, the Commission will safeguard small business applicants from having to bid against entities with far greater resources. Instead, small business applicants will only bid against one another for spectrum, thereby insuring economic opportunity for small business applicants, and carrying out the Congressional mandate.
- The Commission's decisions not to set aside spectrum in the IVDS and narrowband PCS auctions should not sway a decision against an "entrepreneurial band" for broadband PCS. As the Commission aptly noted, only two IVDS frequency blocks are available per service area, thus, any set-aside gives away too great a proportion of the service's spectrum. Fourth Report and Order, PP Docket No. 93-253, FCC 94-99, at ¶ 37 (May 10, 1994) ("Fourth Report and Order"). On the other hand, there will be six frequency blocks using 120 MHz of spectrum available per market in broadband PCS. Allocating one 30 MHz block, which would be equivalent to one quarter of the spectrum, does not give small businesses a disproportionate amount of spectrum. Since narrowband PCS licenses involve relatively low capital entry requirements and heavy bidding is not expected, they are expected to be well suited to small entities without the need for set-asides. Cf. Third Report and Order, PP Docket No. 93-253, FCC 94-98, at ¶ 69 (May 10, 1994) ("Third Report and Order"). On the other hand, entry costs for broadband PCS will be much greater, and bidding for broadband PCS licenses is expected to be quite heavy; therefore, small businesses will be unable to compete in auctions, even with bidding preferences.

- PlusCom supports the Commission's decision allowing a maximum equity ownership of 49.99 percent by non-Designated Entities in an entity owned and controlled by minorities and/or women. Second Report and Order at ¶¶ 277-278. Any larger amount would end up turning a Designated Entity into a de facto non-Designated Entity.
- Similarly, PlusCom supports the ability of a small business entity to form a consortium with a non-small business entity. As long as the ownership and control is at least 50.01 percent by the small business, the entire entity ought to be treated as a small business. This will enhance the ability of small entities to raise capital, while ensuring that larger entities do not defeat the purpose of the "entrepreneurial band." PlusCom supports a maximum investment by non-Designated Entities of 49.99% rather than 19.99% because it eases the ability of the small business to raise capital. A 19.99% limit may not provide enough equity to encourage the necessary investment by a non-Designated Entity. Broadband PCS is so capital intensive that a small business would be unable to participate without such a consortium approach. Therefore, an exception to the general rule against consortiums of small businesses is necessary for broadband PCS. Without the consortium approach coupled with an "entrepreneurial band," there could be no meaningful participation of small businesses in broadband PCS.
- PlusCom supports the use of tax certificates in broadband PCS licensing, as the FCC has ordered for IVDS, Fourth Report and Order at ¶¶ 48-52, and narrowband PCS, Third Report and Order at ¶¶ 81-85. As the Commission noted, "tax certificates would be useful as a means of creating incentives both for designated entities to attract capital from non-controlling investors and to encourage licensees to assign licenses to designated entities in post-auction transactions." Second Report and Order at ¶ 251. This will ease the capital burden on Designated Entities. In addition, PlusCom believes that the tax credit should be given to the entire licensee entity. This would encourage equity funding of Designated Entities by larger companies.
- PlusCom applauds the FCC's decision to reduce the upfront payment amounts appropriate for auctions of the entrepreneurial band from the proposed 2 cents per pop per MHz entry fee for all PCS applicants. Second Report and Order at ¶ 248. In preparation of the

Commission's final broadband PCS auction rules, PlusCom proposes that 2/100 of a cent per pop per MHz would be a reasonable entry fee for small businesses.

- Because of the high cost of broadband PCS licenses, PlusCom believes that the Commission's general rule allowing small businesses to pay 10% of the winning bid within 5 days of the auction and an additional 10% within 5 days of the grant, with the balance paid in installments beginning in the third year is still too onerous for broadband PCS. Second Report and Order at ¶¶ 236-239. PlusCom supports payment of 5% of the winning bid within 5 days of the auction and an additional 5% within 5 days of the grant. PlusCom also supports interest only for three years with the balance of the principal (90%) paid over the last seven years of the license term. By definition, small businesses have very little capital and will need all their capital for the build out. Therefore, these further refinements will free up capital for Designated Entity build outs of broadband PCS systems.
- PlusCom supports the use of forfeiture requirements to prevent unjust enrichment by women and minorities trafficking in broadband PCS licenses acquired through the use of bidding credits, as the FCC has ordered for IVDS, Fourth Report and Order at ¶ 47, and narrowband PCS, Third Report and Order at ¶ 80.
- PlusCom commends the Commission for considering a recapture provision as a safeguard to deter mere speculators from bidding for the "entrepreneurial band," and for allowing transfers between Designated Entities without penalty. Second Report and Order at ¶¶ 261-262. PlusCom agrees with the five year "premature" period adopted by the Commission as the appropriate time period for anti-trafficking safeguards.
- One additional issue unrelated to Designated Entity preferences warrants mention. The Second Report and Order at ¶¶ 135-145, outlines auction activity rules under the Milgrom-Wilson proposal. In the third stage of bidding, auction participants are required to actively bid on licenses encompassing 100% of the MHz-pops for which they are eligible. Id. at ¶ 139; see also Third Report and Order at ¶ 38 (narrowband PCS). PlusCom believes this an unrealistic requirement for the multifarious broadband PCS auctions. As applicants shift their focus between the discrete licenses they wish to bid on, they can come close to, but cannot

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always match the 100% eligibility level. Therefore, should the Commission adopt Milgrom-Wilson activity rules for broadband PCS auctions, it should consider adjusting stage three to allow bidders a 20% "tolerance level," whereby applicants can bid within 10% of 100% eligibility in either direction (i.e., 90%-110% of eligibility), or in the alternative, bid between 80%-100% of eligibility.

If the Commission has any questions regarding the information and/or opinions expressed in the above letter, please contact this office.

Respectfully submitted,



Eliot J. Greenwald

cc: Chairman Reed Hundt
Commissioner Susan Ness
Commissioner Rachelle Chong
Commissioner James Quello
Commissioner Andrew Barrett
William E. Kennard
Robert Pepper
Donald Gipps
Ralph Haller
Gerald Vaughan
Thomas Stanley
Greg Rosston
Julia Kogan
Geraldine Matise
Kent Nakamura